

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

April 29, 1998

DIVISION ONE

Court convened at 9:00 A.M.

Present: Spencer, P.J., Ortega, J., Vogel (Miriam A.), J., Masterson, J., Dunn, J. (Assigned), and S. Beaux, Deputy Clerk.

Each of the following:

B099872 Bailey v. American Airlines
B104437 Tor v. Tor
B112115 People v. Woods
B112792 People v. Holloway
B113033 Thrifty Oil Co. v. City of Hawthorne
B114610 People v. Atkins
B114684 People v. Salas
B115815 People v. Felix
B119050 Kathy B. v. SCLA
B119635 Valerie E. v. SCLA

Argument waived, cause submitted.

B108008 Spencer
 v.
 Sterling Bank

Merits:

Argued by Jeffrey E. Lieber for appellant and by Thomas Swallow for respondent. Cause submitted.

DIVISION ONE (Continued)

B107243 Martin
 v.
 Sprintis M.D. et al.

Merits:
Argued by Clay Averbuck for respondents and no appearance for appellant.
Cause submitted.

B102910 Ratzlaff
 v.
 Dersom et al.

Merits:
Argued by Harland L. Burge for appellant and by Kenneth P. Roberts for
respondents. Cause submitted.

B108071 The People
 v.
 Gutierrez et al.

Merits:
Argued by Gerald Klausner for appellant Gutierrez and by Joseph P. Lee,
deputy attorney general for respondent. Cause submitted.

B114207 Cecil Saydah Company Inc.
 v.
 Pacific Rim Assurance Company

Merits:
Argued by Barry L. Kramer for appellant and by John F. Salisbury for
respondent. Cause submitted.

DIVISION ONE (Continued)

B114828 The People
 v.
 Cook

Merits:

Argued by James W. Bilderback, deputy attorney general for respondent and by Kenneth L. Schreiber for respondent. Cause submitted.

B106549 Sanders
 v.
 Countrywide Funding Corp., et al.

Merits:

Argued by Joel A. Goldman for appellant and by Eric J. Emanuel for respondents. Cause submitted.

B109583 The People
 v.
 Serpas

Merits:

Argued by Robert A. Brown for appellant and by Deborah B. Sturrock, deputy attorney general for respondent. Cause submitted.

B111445 Gateway Chevrolet Motor Co., et al.
 v.
 La Mirada Redevelopment Agency et al.

Merits:

Argued by Nowland C. Hong for appellants and by James L. Markman for respondents. Cause submitted.

Presiding Justice Spencer leaves the bench.

DIVISION ONE (Continued)

B109006 The People
 v.
 Slappey

Merits:

Argued by James F. Tritt for appellant and by Karen Moran O'Keeffe, deputy attorney general, for respondent. Cause submitted.

B099296 Tyler
 v.
 City of Redondo Beach et al.

No appearance for respondent and appellant waived argument. Cause submitted.

Judge Dunn (assigned) leaves the bench.

B118415 Hurlbut et al.
 v.
 SCLA
 (Aragon-Haas et al., r.p.i.)

Merits:

Argued by J. Alan Frederick for petitioners and by Ronald C. Stock for real parties in interests. Cause submitted.

Presiding Justice Spencer resumes to the bench.

B117188 Newington Mountain Homeowners Assoc.
 v.
 Transco Syndicate No. 1, Ltd.

Merits:

Argued by Robert L. Kracht for appellant and by Karen-Denise Lee for respondent. Cause submitted.

DIVISION ONE (Continued)

B102590 Chicago Title Company
v.
Garden Gate, Inc.
Manic Baljian et al.

Merits:
Argued by W.G. Wells for appellant and by John R. Perry for respondents.
Cause submitted.

Justice Vogel leaves the bench.

B097188 Daley
v.
Azafrani

Merits:
Argued by Lionel A. Daley, in pro per, for appellant and respondent waives
argument. Cause submitted.

Court recesses until 1:00 p.m.

The Court reconvened at 1:00 p.m.

Present: Ortega, Acting P.J., Masterson, J., Dunn, J. (Assigned), and S. Beaux, Deputy
Clerk.

B108792 Kessel
B110750 v.
Leavitt et al.

Merits:
Argued by Wendy Lascher for appellant, Ellis J. Horvitz for respondent
David Leavitt and by Boyd S. Lemon for respondent Aileen Leavitt. Cause
submitted.

Court adjourned.

April 29, 1998-Continued

DIVISION ONE (Continued)

B114011 People (Not for Publication)
v.
Fisher

We affirm the judgment.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Masterson, J.

[illegible]

The judgment (imposition of sentence) is reversed. The matter is remanded for a new sentence hearing.

Ortega, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

B117423 People (Not for Publication)
v.
Cuauhtemoc R.

The judgment (order committing defendant to the camp-community placement program) is affirmed.

Ortega, J.

We concur: Spencer, P.J.
Dunn, J. (Assigned)

April 29, 1998-Continued

DIVISION ONE (Continued)

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The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
Dunn, J. (Assigned)

B108659 People (Not for Publication)
v.
Mejia

The judgment is modified to eliminate the one-year enhancement imposed for the prior conviction in case A625987. In all other respects, the judgment is affirmed. The matter is remanded for issuance of a new abstract of judgment.

Ortega, J.

We concur: Spencer, P.J.
Dunn, J. (Assigned)

B108823	People v. Good	(Not for Publication)
B117857	In re Good on Habeas Corpus	

The judgment is affirmed. The petition for writ of habeas corpus is denied.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Masterson, J.

April 29, 1998-Continued

DIVISION TWO

B095395 Macgregor Yacht Corporation
v.
State Compensation Insurance Fund

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment.)

B105826 Alvarez (Certified for Publication)
v.
Coregis Insurance Corporation, et al.

The judgment is reversed and the matter is remanded to the trial court for proceedings consistent with this opinion. Appellant is awarded costs on appeal.

Nott, J.

We concur: Boren, P.J.
Zebrowski, J.

B113278 People (Not for Publication)
v.
Hernandez

The Court:

The portion of the judgment awarding appellant 936 days of presentence credit is reversed, and the matter is remanded for recalculation of appellant's presentence actual custody credit and presentence conduct credit consistent with the views expressed in this opinion. In all other respects, the judgment is affirmed.

Boren, P.J., Fukuto, J., Zebrowski, J.

April 29, 1998-Continued

DIVISION TWO (Continued)

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The judgment is affirmed.

Nott, J.

We concur: Boren, P.J.
Zebrowski, J.

B110233 People (Not for Publication)
v.
Dulaney

The Court:

The judgment is affirmed.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

B112537 Quinn (Not for Publication)
v.
Cafe on Location

The judgment is affirmed.

Nott, J.

We concur: Boren, P.J.
 Fukuto, J.

April 29, 1998-Continued

DIVISION TWO (Continued)

B106814 People (Not for Publication)
v.
Belmonte

The judgment is affirmed.

Nott, J.

We concur: Fukuto, Acting P.J.
 Zebrowski, J.

DIVISION THREE

B107876 People (Not for Publication)
v.
Noe Torres Martinez

The judgment is affirmed. The trial court is directed to prepare an abstract of judgment, amended in accordance with this opinion, and forward a copy thereof to the Department of Corrections.

Klein, P.J.

We concur: Kitching, J.
Goodman, J. (Assigned)

B109321 People (Not for Publication)
v.
Harvey Lee Clark

The judgment is affirmed.

Kitching, J.

We concur: Klein, P.J.
Croskey, J.

DIVISION THREE (Continued)

B098852 David W. Parsons and Steven L. Anderson (Not for Publication)

v.

Charlston, Revich, & Williams and Stuart K. Lesansky

The judgment in favor of Charlston and Lesansky is reversed. Parsons and Anderson to recover costs on appeal.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

B112988 Vincent Chan

v.

Department of Motor Vehicles

Filed order denying petition for rehearing.

DIVISION FOUR

B113897 Martinez

v.

Pacific National Insurance Company

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment.)

B107260 People (Not for Publication)

v.

Hsu

The judgment is affirmed.

Hastings, J.

We concur: Vogel (C.S.), P.J.
 Epstein, J.

April 29, 1998-Continued

DIVISION FOUR (Continued)

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The judgment is affirmed.

Hastings, J.

We concur: Vogel (C.S.), P.J.
Czuleger, J. (Assigned)

B102289 People
v.
Baldwin

Filed order denying petition for rehearing.

DIVISION FIVE

B117345 People (Not for Publication)
v.
Gabriel Murrietta

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B108907 Albert Lewis Villamar, Jr. (Not for Publication)

v.
County of Los Angeles, et al.

The judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.
 Godoy Perez, J.

B112459 People (Not for Publication)

v.
Dwight Edward Nichols

The judgment is affirmed.

Godoy Perez, J.

We concur: Turner, P.J.
 Armstrong, J.

B112349 People

v.
Jose Sanchez

Filed order vacating submission order of January 7, 1998. This is due to the complexity of the legal issues as to whether the abstract of judgment must reflect a restitution fine and a laboratory fee, questions of first impression in California. Additionally, vacation of submission is warranted given the heavy caseload currently being processed by Division Five. Cause resubmitted.

April 29, 1998-Continued

DIVISION SIX

B103714 City of Oxnard et al.
v.
Roger M. Donlon et al.

Filed order modifying opinion. Petition for rehearing is denied. Appellants' request for publication is denied. There is no change in judgment.

(Certified for Publication)

B105545 Los Carneros Community Associates, Inc. et al.
v.
Penfield & Smith Engineers, Inc., et al.

The judgment of dismissal and order awarding costs and attorney's fees are reversed. Costs are awarded to appellants.

Gilbert, J.

We concur: Stone, P.J.
 Yegan, J.

B111324 People (Certified for Publication)
v.
Erving

The judgment is affirmed.

Yegan, J.

We concur: Gilbert, Acting P.J.
 Coffee, J.

April 29, 1998-Continued

DIVISION SIX (Continued)

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The judgment is affirmed.

Stone, P.J.

We concur: Yegan, J.
Coffee, J.

B115476 People (Not for Publication)
v.
Melchor

The judgment is affirmed.

Coffee, J.

We concur: Gilbert, Acting P.J.
 Yegan, J.

DIVISION SEVEN

B109957 People (Not for Publication)
v.
Wilson

The judgment of conviction is affirmed. The sentence is vacated and the cause remanded to permit the trial court to exercise its discretion whether to impose concurrent or consecutive sentences.

Johnson, Acting P.J.

I concur: Neal, J.
I concur & dissent: Woods, J. (Opinion)

April 29, 1998-Continued

DIVISION SEVEN (Continued)

B111761 People v. Rathert (Not for Publication)

The judgment is reversed.

Johnson, Acting P.J.

I concur: Neal, J.
I dissent: Woods, J. (Opinion)

B112924 Los Angeles County, D.C.S. (Not for Publication)
v.
Sandra D.
In re Jessica D.

The judgment is affirmed.

Johnson, Acting P.J.

We concur: Woods, J.
Neal, J.

B110474 People (Certified for Partial Publication)
v.
Loot

The judgment is affirmed.

Johnson, Acting P.J.

We concur: Woods, J.
Neal, J.

DIVISION SEVEN (Continued)

B104071 People (Not for Publication)

v.
Mangram

The judgment is modified to impose the stayed 5-year term on the Penal Code section 667, subdivision (a) enhancement. As modified, the judgment is affirmed.

Neal, J.

We concur: Lillie, P.J.
 Johnson, J.

B112673 Del Rio, et al. (Not for Publication)

v.
Kmart Corp.

The judgment is affirmed.

Neal, J.

We concur: Johnson, Acting P.J.
 Woods, J.

B112374 City of Vernon, et al. (Certified for Partial Publication)

v.
Board of Harbor Commissioners, et al.

The judgment is reversed insofar as it held that the FEIR was not certified in compliance with CEQA, because it was a "post hoc rationalization" for an approval of the project. Accordingly, we hold that the court erred in ordering the issuance of a peremptory writ of mandate, and the award of attorney fees under Code of Civil Procedure section 1021.5 is therefore also reversed. The judgment is affirmed in all other respects. The peremptory writ of mandate is vacated, and the superior court is directed to enter a new and different judgment denying the writ petition. The City of Long Beach, the Board of Harbor Commissioners, and the Port of Long Beach shall receive their costs on appeal.

Woods, J.

We concur: Lillie, P.J.
 Johnson, J.

April 29, 1998-Continued

DIVISION SEVEN (Continued)

B107138 People (Not for Publication)
v.
Ariaza & Ramos

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment.)

B110417 People (Certified for Publication)
v.
Lawrence

Filed order modifying opinion. (No change in the judgment.)